

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
MEETING MINUTES

November 17, 2004  
7:00 p.m.

Bellevue City Hall  
City Council Conference Room

COMMISSIONERS PRESENT: Chair Lynde, Vice-Chair Bonincontri, Commissioners Bach, Maggi, Mathews, Orrico, Robertson

COMMISSIONERS ABSENT: None

STAFF PRESENT: Kathleen Burgess, Mary Kate Berens, Department of Planning and Community Development

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:01 p.m. by Chair Lynde who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present.

3. APPROVAL OF AGENDA

The agenda was approved by consensus.

4. STAFF REPORTS – None

5. PUBLIC COMMENT – None

6. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None

7. STUDY SESSION

A. Land Use Code Amendment  
– Downtown

Legal Planner Mary Kate Berens said the proposed amendment is scheduled for a public hearing on December 15. She briefly reviewed the changes to the amendment which were focused on the reorganization of the footnotes of and the exceptions to the dimensional charts; a change to the sections concerning walkways and sidewalks; revisions to the Major Public Open Space review process, and changes to the language of the requirement for upper level setbacks in the Downtown core.

Commissioner Maggi asked if chain link fences are allowed in the Downtown under any circumstances. Ms. Berens said temporary fences can be used at construction sites and for

temporary uses or special events. She added that there is no prohibition against solid fences in the Downtown.

Commissioner Orrico called attention to paragraph 3.b on page 10 of the packet and asked if the language regarding exceeding the maximum Floor Area Ratio is referring to construction of the Major Public Open Space by the applicant. Ms. Berens explained that because the credit can be transferred, the floor plate limits can be exceeded either by the person who constructs the Major Public Open Space or the person to whom the credit is transferred.

Commissioner Orrico said she could not find the Subsection D referred to in paragraph 4.c on page 11. Ms. Berens said she would verify the reference.

Commissioner Robertson suggested that the language “4 feet in width” as used in paragraph B.4 on page 15 should read “4 feet wide” instead. She also noted that “infeasible” in paragraph C.2 on page 16 should be changed to “not feasible” to be clearer. She further asked staff to revise the language of the sub-paragraphs under paragraph C.3 to make use of parallel language.

B. Land Use Code Amendment  
– Critical Areas

Ms. Berens explained that the proposed code amendment is aimed at implementing the critical areas policies that are currently in front of the City Council for action. It will take a series of study sessions to work through all of the issues, including steep slopes, riparian corridors, wetlands and shorelines. Staff will craft ordinance language following the first round of study sessions and will schedule a public hearing, probably in the March to May 2005 timeframe.

Current outreach efforts are focused on the website. Prior to the public hearing there will be a series of open house events scheduled.

Ms. Berens said there are several issues to consider, beginning with whether or not existing structures within existing or expanded buffers from a critical area should be designated as nonconforming. Under the current code, legal structures built prior to 1987, which is when the first critical areas ordinance went into effect, are not considered to be nonconforming, though there are a series of rules that apply to them which in essence treat them as nonconforming structures. Accordingly, staff believes such structures should be called nonconforming in line with how they are treated currently.

Commissioner Maggi asked what impacts are associated with having a nonconforming structure. Ms. Berens said the perception is that a nonconforming status has a negative impact on value. The research done to date by staff has not found that to be the case. Generally speaking, the code relative to nonconforming structures in Bellevue is quite lenient. Such structures are allowed in and out of critical areas citywide, can be expanded, can be remodeled or renovated up to 100 percent of their replacement value, and can be transferred to other owners.

Ms. Berens said a second issue to consider is whether or not a proposed expansion of a nonconforming single family residence should be treated differently than a proposed expansion of a nonconforming multifamily or commercial structure. Under the current code, the uses are treated differently in that single family is allowed more ability to expand within the protected area, whereas multifamily and commercial structures must be brought into compliance. The expansion of single family uses is specifically called out by policy in the Comprehensive Plan.

A third issue to be considered is whether or not nonconforming structures should be treated the

same across all types of critical areas, including shorelines. The current code treats riparian areas differently, and there is an entirely different code with regard to shorelines. In the shoreline area, a nonconforming structure destroyed by fire is allowed to be rebuilt within the same footprint if done within a year, regardless of whether or not there is an issue of nonconformity. There is no such similar allowance for other critical areas. The recommendation of staff will be to treat nonconforming structures the same regardless of the kind of critical area they are nonconforming to.

Commissioner Maggi suggested that the argument would be stronger if all structures in all types of critical areas were treated the same. Ms. Berens observed that legally the Council has a lot of leeway in making those determinations. She allowed that public perception is quite another thing.

Chair Lynde pointed out that the issues facing steep slopes are quite different from those facing wetlands. For wetlands, value is primarily based on permeability of the ground and vegetation, whereas for steep slopes there is value in setbacks and erosion prevention.

Ms. Berens said steps will be taken to assure the public that the city will not proactively seek changes to nonconforming structures in critical areas. If structures are in place and no changes are planned, nothing more will be required.

Ms. Berens explained that the current code allows a one-time expansion of existing structures in riparian areas of up to 20 percent of the original footprint without regard to the direction of expansion, including into the critical area. Expansions upward that do not increase the size of the footprint do not count against the one-time expansion.

With regard to remodels, Ms. Berens said there is a provision in the current code that triggers full compliance for remodels that equal 100 percent of the replacement value of the structure, or a series of remodels within a three-year period that equal 100 percent of the replacement value. The criteria applies equally to complete tear-downs. Structures damaged or destroyed are subject to the same percentage test; the exception is for shorelines where rebuilding to the original footprint is allowed to occur if within a one-year period of the damage or destruction.

Under the proposal, expansion of an existing structure that is in part or totally within a protected area will still be allowed. However, a hierarchy would be added in which priority would be given to expansions away from critical areas. Only if all other options are proved to be infeasible would expansion into a critical area be permitted. There was discussion at the CAC level regarding an allowance for changes in setbacks. If the only thing precluding expansion outside of the critical area is the front yard setback, there should be some administrative ability to adjust that setback accordingly without going through a variance. The same wiggle room should be allowed for side setbacks. Under the hierarchy, top priority would be given to expansion directly opposite the critical area; second priority would be for expansion to the side; and the least preferred direction, and only if the other directions are not feasible, would be into the critical area setback.

Ms. Berens allowed that damage/destruction and remodel could be treated the same or differently. Currently, they are treated the same in that the compliance trigger is based solely on a valuation threshold. Staff proposes that in the case of damage/destruction an owner should be allowed to rebuild within the original footprint, provided the work is undertaken within a reasonable time, such as one year; there could be flexibility built into the timeframe to allow for exceptions as necessary. Expansions to the original structure could be allowed provided they occur in accord with the hierarchy which gives preference to directions away from the critical

area.

Commissioner Bonincontri asked if any survey has been done to determine how many properties are fully or mostly within critical areas. Ms. Berens said there has been no full GIS analysis done; not all wetlands or streams are even mapped. She said it is safe to say that there are many properties that would not be able to fully comply, which is why there needs to be provisions in the code to accommodate those situations.

Commissioner Robertson suggested that regardless of whether or not damage/destruction is treated the same as remodel, there should be built-in incentives for moving outside protected areas. Especially in cases of complete tear-downs, some mitigation should be required, though such mitigation should not be overly burdensome.

Answering a question asked by Commissioner Maggi, Chair Lynde said the CAC understanding was that the city will not be able to force changes to existing situations. They agreed that there should be some acknowledgement by property owners in protected areas that in fact critical areas are critical to the city's overall ecology.

Commissioner Maggi asked what regulations apply to structures located within a floodplain. Ms. Berens said there are more restrictions for those zones. The floodplains are determined by FEMA and they affect insurance rates; the maps were originally generated 20 to 30 years ago, although some site specific or area-specific amendments have been approved by FEMA base on changed circumstances. There are ways to build within a floodplain but there are additional performance measures that must be followed.

Commissioner Bach asked how commercial structures would be treated. Ms. Berens said the proposal of staff would be to treat them as they are currently treated. Any expansion triggers compliance with the critical areas requirements, which essentially limits them to expansions away from protected areas. The trigger for remodels is pegged at 70 percent of replacement value.

Commissioner Bach asked if manmade wetlands and lakes are considered to be critical areas. Ms. Berens said they do count, though there are exceptions for wetlands created as a result of road construction after 1990. Commissioner Bach said he is aware of a property in unincorporated King County on which a lake was created 40 years ago; King County is allowing the property owner to drain the lake and build on it. Ms. Berens said a wetland is determined based on a number of factors, including soils and hydrology, some of which can take years to meet the definition of a wetland.

Staff was directed by the Commission to begin crafting the regulations along the lines proposed. Ms. Berens said the next critical area issue will be before the Commission on December 1.

## 8. OLD BUSINESS

Ms. Burgess reported that the Council continued its review of the Comprehensive Plan update on November 8; they are set to adopt the package on November 22. They elected to change the approach to minimum density on the strength of the fact that the city is developing to the density for which it is zoned. Staff was directed to include language in the plan making that point clear. Staff was also directed to add language to the Land Use Element related to the issue of four units per acre that explains the approach of the city to residential density that places the highest densities in the Downtown and in other multifamily developments.

Ms. Burgess informed the Commission that during two previous meetings some members of the City Council spoke against allowing detached accessory dwelling units. The staff report pointed out that the Commission and the East Bellevue Community Council are in favor of permitting them, and without discussion the Council approved language allowing detached units.

The Council also directed staff to add language to the Economic Development Element about Bellevue's increasing diversity and international trade and connections. A paragraph was added to the Environmental Element related to balancing the element against other elements.

With regard to the issue of green space south of Downtown, the Council generalized the language for a green space between 110<sup>th</sup> Place and 112<sup>th</sup> Avenue SE.

Ms. Burgess said a Comprehensive Plan Amendment and Land Use Code Amendment related to Overlake Hospital will be introduced to the Commission on December 1 and will be before the Commission again on December 15. Beginning in January, there will be several more study sessions on the topic moving toward Council adoption in March 2005.

Commissioner Orrico noted that she would recuse herself from any participation in matters related to Overlake Hospital to avoid the appearance of a conflict of interest.

9. APPROVAL OF MINUTES

A. September 22, 2004

Motion to approve the minutes as submitted was made by Commissioner Robertson. Second was by Commissioner Bach and the motion carried unanimously.

10. NEW BUSINESS – None

11. PUBLIC COMMENT – None

12. ADJOURNMENT

Chair Lynde adjourned the meeting at 8:32 p.m.